

MILPITAS OVERSIGHT BOARD

TO THE CITY OF MILPITAS ACTING AS THE RDA SUCCESSOR AGENCY

455 EAST CALAVERAS BOULEVARD, MILPITAS, CA 95035-5479
GENERAL INFORMATION: 408-586-3000 www.ci.milpitas.ca.gov

MILPITAS OVERSIGHT BOARD MEETING

Milpitas City Hall, Committee Room
455 E. Calaveras Blvd., Milpitas, CA

MEMBERS:

Maribel Medina, Chair
Michael Mendizabal
Althea Polanski
Emma Karlen
Bruce Knopf
Mike McInerney
Glen Williams

ALTERNATES:

Jane Corpus Takahashi
Rudy Nasal
Michael Murdter
Alan Minato

Minutes of the May 12, 2015 Meeting

I. CALL TO ORDER, ROLL CALL AND PLEDGE OF ALLEGIANCE

Chair Medina called the meeting to order at 4:00 p.m.

ROLL CALL

MEMBERS PRESENT: Maribel Medina, Emma Karlen, Mike McInerney, Bruce Knopf, Mike Mendizabal, Althea Polanski and Glen Williams

MEMBERS ABSENT: None

II. PUBLIC FORUM

1. Mr. Don Peoples complimented the Board for its service and said he supports the Oversight Board's goals. He explained that 230 N. Main Street has been the subject of a 15 year task to turn it into a park. The property was lost to a developer and then recovered through Redevelopment and has been in the City's General Plan. Mr. Peoples said that recently a group succeeded in establishing a 501(c) 3 for a Milpitas Community Museum, with the property as an ideal place for a museum and a visitor's center. Mr. Peoples said there is great community support for the plan, with a petition drive in the process to show the Board that support. Mr. Peoples pleaded with the Board for a mechanism to keep this property in the community, calling it a great asset.

Mr. Peoples also addressed the Board on the Cracolice property (540 S. Abel Street) saying that this property goes back approximately 60 years. Mr. Peoples said he served on the YMCA board, and that organization was at this location for many years, supported by the community, but left for reasons relating to the building and maintenance issues. Mr. Peoples said that the Cracolice building would have been first choice for a museum and requested that the Board to keep this property in the community.

Mr. Mark Tiernan addressed the Board, saying he is a former member of the Planning Commission and is a member of the Historical Society and echoed Mr. Peoples' sentiments about the Cracolice property, calling it extremely valuable to the citizens of Milpitas. Mr. Tiernan feels the property offers a great opportunity to showcase Milpitas' history and art

III. APPROVAL OF AGENDA

Moved by Ms. Polanski and seconded by Mr. Knopf, to approve the agenda. The motion passed unanimously.

IV. APPROVAL OF MINUTES FOR April 8, 2015.

Moved by Mr. McInerney and seconded by Mr. Knopf to approve the minutes of April 8, 2015. The motion passed unanimously.

V. OLD BUSINESS

None

VI. NEW BUSINESS

A. Report from Ad Hoc Committee of Oversight Board Regarding RFP Process and Recommending Adoption of Resolution No. 61 of the Oversight Board Approving Request for Proposals (RFP) for Property Located at 86 No. Main Street, Milpitas, CA.

Ms. Montoy presented the staff report recommending adoption of Resolution No 61, by which the Oversight Board Ad Hoc Committee (Medina, Polanski & Williams) recommended adoption of Resolution No. 61 approving a Request for Proposals (RFP) for the sale of Property No. 1 listed on the Long Range Property Management Plan and located at 86 N. Main Street, Milpitas, California.

Ms. Karlen asked Ms. Montoy who will receive the proposals and will the Successor Agency receive copies of the RFP. Ms. Montoy said the RFP's will be collected by her then submitted to the ad hoc committee who will review and make recommendations. Ms. Montoy noted the Successor Agency will also have an opportunity to make comments when the matter comes before the board.

Ms. Karlen referred to page 10, under Background, 3rd paragraph which says the Successor Agency will review proposals and transmit its recommendations to the Oversight Board to the City of Milpitas regarding the Successor Agency receiving copies. Ms. Montoy said that the City will receive a copy of the proposal adding that since it's an open process the Successor Agency will have a chance to opine on the process.

Mr. Tom Williams pointed out for the record, that the Successor Agency is not the Oversight Board saying they are two different entities.

After a brief discussion to clarify the confusion of the wording of the 3rd paragraph, it will be amended to read "The Successor Agency will review the proposals and transmit its recommendations to the Oversight Board to the Successor Agency ("Oversight Board.")

Moved by Ms. Polanski and seconded by Mr. Williams to approve the RFP. The motion passed unanimously.

B. Consideration and Adoption of Resolution No. 62 of the Oversight Board Approving the Transfer of Governmental Use Property from the Successor Agency to the County of Santa Clara Pursuant to Health and Safety Code Section 34181(a) and In Accordance with the Long Range Property Management Plan.

1. Consider Legal Memorandum from Successor Agency Counsel Regarding Proposed Transfer of County Health Center Parking Garage.

Ms. Montoy presented the staff report recommending adoption of Resolution No. 62 of the Oversight Board approving the transfer of governmental use property (County Health Center Parking Garage located at 93 North Main Street, Milpitas, CA) from the Successor Agency to the County of Santa Clara pursuant to Health and Safety Code Section 34181(a) and in accordance with the Long Range Property Management Plan.

Mr. Ogaz, Successor Agency Counsel, had submitted a memorandum to the Oversight Board concerning this matter and he made a verbal presentation. He noted the property was purchased by Redevelopment Agency before the dissolution of Redevelopment and a ground lease agreement was entered into with the County whereby the County undertook to build a parking garage on the property. The ground lease provided that at such time as the ground lease shall be terminated or within 12 months prior to that, the County would pay to the Redevelopment Agency \$1.9 million. He said the dissolution of Redevelopment changed everything and now it's not the Redevelopment Agency but the taxing entities who are essentially the beneficiaries of that ground lease. He argued that as fiduciaries with a responsibility to the taxing entities, the Oversight Board should make the transfer, consistent with the LRPMP requirement that transfer be subject to the terms of the lease, which is the payment of the \$1.9 million. The dissolution process contemplated that assets of the RDA that can be liquidated should be liquidated to the benefit of the taxing entities. So, in this case there is \$1.9 million that should be paid at termination of the lease, which is essentially now if there is an order by the Oversight Board to transfer the property.

Deputy County Counsel Ray Ruiz distributed a letter from the County dated May 12, 2015, regarding the transfer of the property. Mr. Ruiz said that the County agrees with the City of Milpitas to the extent the LRPMP restricts the use of the property in certain ways and the plan directs the transfer is subject to environmental conditions or restrictions and the public parking restrictions and those are reflected in the Grant Deed. However, the County disagrees with the Successor Agency on amending the LRPMP. He argued that the ground lease provides that the option be exercised at the end of the term; is it not exercisable at this time.

Ms. Polanski asked how come the part about the purchase of the \$1.9 million is not part of what the Board is doing so that in the year 2081 it would come back to the taxing entities.

Ms. Montoy said Mr. Ogaz is correct regarding the duties of the Oversight Board and the Board's fiduciary responsibility to the taxing entities. Ms. Montoy stated the DOF letter which approved the LRPMP states the approved LRPMP shall govern and supersede all other provisions relating to the disposition and use of all the real property assets of the former Redevelopment Agency. Ms. Montoy noted the DOF letter addresses only terms and conditions with respect to the environmental matter and the parking. Other provisions concerning the lease are not set forth as conditions. The option was an option for the County to exercise within 12 months of the expiration of the lease. The County is not exercising an option.

Mr. Ogaz noted that we are operating under new legislation. The provisions are to go through and make this determination based on what you already determined in the past with the LRPMP and the DOF has approved.

Ms. Montoy brought up Mr. Ogaz's comment in his letter regarding Board members who are County employees to recuse themselves. Mr. Ogaz argued that persons who are appointed by the County and are existing employees of the County have a conflict of interest with regard to whether they should do what's best for the County or what's best for the taxing entities and that their highest duty is to the taxing entities on the Board. Mr. Ogaz asked that they recuse themselves.

Chair Medina asked Mr. Ogaz in other instances where the Board has done governmental transfers to the City were members of the Board representing the SA/City did they recuse themselves. Mr. Ogaz said he does not know if they did.

Chair Medina asked of Ms. Montoy to address the Conflict of Interest.

Ms. Montoy said another aspect of the Dissolution Law is how these boards were created and are comprised of representatives of taxing entities including two (2) members from the City and two (2) members from the County and then representatives of other taxing entities as per the legislation. There is no legal authority for Mr. Ogaz's position. The Oversight Board members serve without compensation. However, there are employees of the County and other taxing entities that serve on this board. Under the Political Reform Act, which addresses financial interests of individuals on boards such as this, governmental income does not constitute income. The other provision has to do with Government Code 1099, which discusses simultaneous representation of multiple agencies and potential incompatibility of offices and which was expressly addressed in Health and Safety Code Section 34179 (c) wherein the legislature said that board members can sit on as many as four (4) Oversight Boards.

Ms. Karlen said that whenever there's been a vote it's always 5-2. To ask whether the SA should be recused is ridiculous otherwise it would be just five (5) voting.

Mr. Ogaz said he is aware of the authorities Ms. Montoy cited and the regulations regarding financial conflict, but noted he was talking about common law conflicts of interest and asked whether the County appointees could honestly determine that they would be unbiased. Or are you basically going to vote because it's in the self-interest of the County to get this property

for free. He stated the members were “not mandated to” recuse themselves but asked them to do so as they have a conflict and can’t be fair. He continued to argue that this was a termination of the lease triggering the option payment. He also noted that the lease and the deed speak valuable consideration and that there is no valuable consideration if the County just gets it “for free.” He also said that the fact the payment is not in LRPMP doesn’t mean it shouldn’t and that the Oversight Board may add that condition.

Mr. Mendizabal agreed with Ms. Montoy’s assessment of people having to recuse themselves or not recuse. He said he knew the LRPMP provides for the transfer in the manner presented and did not know if it could be amended. He said the \$1.9 million should have been part of the transaction. The County would get a certain percentage back. As far as the other government use buildings that went back to the City and were a part of the RDA that was decided in a court case. He stated he would be in favor of changing the agreement and would like Ms. Montoy’s opinion.

Ms. Montoy responded by saying DOF has said that the LRPMP governs so if a majority wanted to do it, there are one of two ways: to approve the transfer subject to payment or table this and ask for the LRPMP to be amended. The third option would be to proceed with the item before the Board.

Mr. Mendizabal asked if DOF would be upset with us if we change things.

Ms. Montoy said DOF likes the check list of documents they have approved before. In addition, the transfers made to the Successor Agency were made pursuant to a court settlement by the various parties. With respect to other transfers of governmental property generally they are not made for compensation. When DOF determines that something qualifies as a governmental use as they have here with the approval of the LRPMP they have not required compensation.

Ms. Polanski says she agreed with Mr. Mendizabal because she thinks it should be part of the agreement. She said that money is to get back to the taxing entities. She stated she did not appreciate the lateness of County Counsel’s letter. I prefer to get those things in a more timely fashion.

Mr. Knopf said that past actions before the board have definitely had financial impact or benefit for the Successor Agency. The administrative budgets are clear examples of that. The City appointed, Successor Agency representatives took full participation in both deliberations and the final votes and that he would not expect it any other way. Mr. Knopf said he respected their ability to weigh and deliberate items from both sides. He said “I believe I can be fair and I am a County employee but throughout this process I have weighed the issues looking at pros and cons and I thought about those issues on behalf of the taxing entities. I feel all of my votes to this point have represented that.” In terms of this particular lease the opportunity for the County to exercise the option, he said it was a window of time at the end of the lease where the County has the opportunity, not the obligation to exercise the option and at that time pay the 1.9 million. He finished by stating the termination of Redevelopment was an action of the state legislature and the process of governmental use transfers really takes precedence over any other agreements that have been in place and that he looked at this transfer in the same way he looked at the transfer of the parking lot adjacent to the library to the City that the OB approved under the governmental use transfers.

Moved by Mr. Knopf and seconded by Mr. Williams to approve the resolution as proposed by staff.

Discussion:

Ms. Karlen addressed Mr. Knopf comments regarding that the Oversight Board “out of the goodness of your heart approved our administration budget.” She said that this is the law and that the Board had used the administration budget as a weapon against this Successor Agency. She asked that Mr. Knopf not mention what he did for the Successor Agency at all because he had done nothing for the community.

Mr. Tom Williams said he echoed Ms. Karlen’s comments that some of the political discussion was playing to the crowd, and he objected. “If people were here two years ago they would find that the Oversight Board was trying to take fire stations, was trying to take away our police department office building, was trying to take our corporation yard and there was an actual amount that was dictated by this Oversight Board that at one point in time the Successor Agency (City of Milpitas) was to pay to keep our Police Station Fire Station and Corporation Yard open so for the record I object to those comments of Mr. Mendizabal and Mr. Knopf. Anybody that would like to look at the history it’s available.”

Ms. Polanski asked if she could understand some of the comments Mr. Knopf made and whether the option goes away with the action before the Board. Mr. Knopf said yes. Ms. Polanski said so the only thing that stays in place is the ability of the citizens of Milpitas to park there when there is non-medical center use and the other terms of the lease. Mr. Knopf said yes.

Ms. Montoy said that if this motion were to pass it would become the County's property and so there would no longer be a lease. If for some reason this motion were not to pass then this property would not transfer and the lease would remain until 2084 and the County would not be required to exercise that option.

Mr. Ogaz read terms of lease: "The Option shall be exercisable by County at any time during the 12-month period prior to the Lease Termination Date." He stated that if the Board approves the transfer that would be the lease termination date. And it's available during the 12-month period prior to that which means right now. He said the Option is available "right now" for the County and if they don't want to exercise it they should allow the transfer to go to the Successor Agency and not the County.

Mr. Glen Williams stated he did not agree with Mr. Ogaz's interpretation. The lease termination date in the lease is within quotation marks. It is a defined term within the lease. And, the defined term is a date specific and in the lease it is very specific. He said that was his interpretation of the lease and would be voting accordingly. He said he sat on this board representing the Library District and the Library District had received a transfer free of charge of the garage associated with it. He said he saw no difference between the transfers.

Ms. Polanski said that as someone who serves representing the City of Milpitas she had no problem with the conflict of interest issue presented. She asked about governmental use.

Mr. Mendizabal responded by saying that governmental use means it is determined that it is for governmental use and the Oversight Board determines which governmental use agency it goes to.

Moved by Mr. Knopf and seconded by Mr. Williams to approve the resolution as proposed by staff.

Chair Medina asked that the vote be taken by roll call. The motion passed with the following vote: **AYES:** Medina, Knopf, McInerney & Williams; **NOES:** Karlen, Mendizabal & Polanski

C. Reports and Correspondence

1. Update from successor Agency Regarding Refunding Bonds for 2003 Allocation Bonds. (Informational Item)

Ms. Montoy said that Ms. Karlen sent the memo to her on Friday, May 8, 2015 and it was forwarded to the City Clerk but the clerk was unable to get it posted, adding that it cannot be transmitted to the Board within 72 hours unless it's posted publicly.

Chair Medina asked Ms. Karlen to give a summary.

Ms. Karlen provided a brief staff report regarding an update on the allocation bonds and attached a table prepared by the Underwriter showing the annual savings achieved by the Refunding Bonds.

Chair Medina asked of Ms. Karlen that when the ROPS comes back to the Board, if the Board can have information on what legal document requires the servicing of the 50% debt service. Ms. Karlen agreed to do so.

Mr. Glen Williams congratulated and thanked Ms. Karlen for an excellent job and that the Successor Agency deserves credit for the timing and the execution of the Bond Refunding.

Mr. Glen Williams asked for the record, on the Savings Chart under Present Value, what the 2.4384314% represents. Ms. Karlen explained that the discount rate is the bond rate.

2. April 22, 2015 Email from Department of Finance to Emma Karlen Regarding Review of Oversight Board Resolution No. 59. (Informational Item)

Ms. Montoy said DOF made a determination to review Resolution No. 59 (Appraisal Contract has not been executed by the Successor Agency.) Ms. Montoy spoke with DOF's staff analyst, who did not give a decision or determination but said it was sent to management and that Ms. Montoy should be hearing something soon.

Ms. Montoy learned that she was not on DOF's list but was assured she will be receiving copies of any correspondence.

Jenny DeAngelis from the County of Santa Clara explained that the Successor Agency has to be the one to add a third contact to DOF.

VII. SET NEXT MEETING DATE

It was agreed that the next meeting will be held Monday, June 29, 2015 at 2:00 p.m.

VIII. MEETING ADJOURNMENT

Moved by Ms. Polanski and seconded by Mr. Knopf, Chair Medina adjourned the meeting at 3:05 p.m. on the consensus of the Board.

*Meeting minutes drafted and submitted by
Barbara Crump, Board Secretary*

Approved as amended on June 29, 2015:

for Michael S. McInerney
Maribel Medina
Oversight Board Chair *Vice Chair*

Barbara Crump
Barbara Crump
Oversight Board Secretary